

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VISHVAJITSINH RANA,

Plaintiff,

v.

WILLIAM P. BARR, et al.,

Defendants.

CASE NO. C20-561 MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on Petitioner Vishvajitsinh Rana's Objections (Dkt. No. 13) to the Report and Recommendation of the Honorable Michelle L. Peterson, United States Magistrate Judge (Dkt. No. 12). Having reviewed the Report and Recommendation, the Objections, the Response to the Objections (Dkt. No. 14), and all related papers, the Court ADOPTS the Report and Recommendation and DISMISSES this matter with prejudice.

Background

On February 6, 2020 Petitioner, an Indian citizen, was taken into custody by United States Customs and Border Protection near Custer, Washington. (Id., ¶ 29.) When questioned

1 by a Border Patrol Agent, Petitioner stated that he feared he would be persecuted or tortured if he
2 returned to India. (Id.) On February 18, 2020 a United States Citizenship and Immigration
3 Services (USCIS) Asylum Officer conducted a Credible Fear Interview of Petitioner, where
4 Petitioner testified that he was attacked several times by a former friend of his father, Yushuf
5 Khan, who blamed Petitioner's father for providing faulty materials that caused a building to
6 collapse. (Id. ¶ 34.) Petitioner also explained that Mr. Khan was a local leader of the Bharatiya
7 Janata Party (BJP), a political group in India and the attacks were motivated not only by the
8 building collapse but by Petitioner's refusal to join the BJP. (Id. ¶¶ 33, 36.) The Asylum
9 Officer conducting the Credible Fear Interview made a Negative Credible Fear Finding. (Id.
10 ¶ 37.) The Finding was reviewed and approved by a Supervisory Asylum Officer on February
11 19, 2020. (Id.)

12 On February 26, 2020, an Immigration Judge conducted a Credible Fear Review Hearing
13 of the Department of Homeland Security's Negative Credible Fear Determination. (Id. ¶ 40.)
14 Petitioner contends that he was not provided with a full copy of the Asylum Officer's report
15 ahead of the hearing. (Id. ¶ 46.) In particular, Petitioner did not have a copy of the "Credible
16 Fear Interview Questions & Answers." (Id.) The Immigration Judge denied Petitioner's request
17 for an extension of time to review the documents but allowed Petitioner's counsel to review the
18 documents during the regular hearing time and through the lunch break. (Id. ¶¶ 49-51.)

19 Once the hearing began, the Immigration Judge affirmed the Negative Credible Fear
20 Determination, writing in his opinion that Petitioner had not "established a credible fear of
21 torture in a country to which you have been ordered removed because you have not established
22 that there is a significant possibility [t]hat you could not relocate to a part of the country of
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removal where you are not likely to be tortured.” (Id. ¶ 68 (citing Ex. B at 3).) The case was returned to the Department of Homeland Security for Mr. Rana’s removal. (Id. ¶ 40.)

Discussion

On April 14, 2020 Petitioner, proceeding through counsel, initiated this 28 U.S.C. § 2241 habeas action to obtain a stay of removal and challenge his expedited removal order. The Court stayed Petitioner’s removal pending adjudication of the merits of his claims. (Dkt. No. 3.)

Although the Immigration and Nationality Act (“INA”) precludes judicial review of Petitioner’s claims, see 8 U.S.C. § 1252(e)(2), the Court assumed jurisdiction over the action pursuant to

Thuraissigiam v. U.S. Department of Homeland Security, 917 F.3d 1097 (9th Cir. 2019), which held that § 1252(e)(2) violates the Suspension Clause as applied to claims like Petitioner’s.

However, while this matter was pending, the Supreme Court reversed the Ninth Circuit, holding that § 1252(e)(2)’s prohibition on judicial review does not violate the Suspension or Due Process Clauses and remanding for dismissal of the habeas petition. Dep’t of Homeland Sec. v.

Thuraissigiam, 140 S. Ct. 1959 (2020). Specifically, the Court noted that “an alien who is detained shortly after unlawful entry” like Petitioner here, has “only those rights that Congress has provided by statute,” including “the right to a ‘determin[ation]’ whether he had ‘a significant possibility’ of ‘establishing eligibility for asylum.’” Id. at 1983 (quoting

§§ 1225(b)(1)(B)(ii), (v)). Because the respondent “was given that right,” the Court held that the Due Process clause does “does not require review of that determination or how it was made.” Id.

The Report and Recommendation therefore recommended that the Court dismiss Petitioner’s claims because Thuraissigiam makes clear the Court lacks jurisdiction to review the Immigration Judge’s determination. (Dkt. No. 12.) The Court agrees.

Petitioner objects, arguing that Respondents were required to provide Petitioner with a complete copy of the Asylum Office's Credible Fear materials and that the Immigration Judge erroneously placed the burden on Petitioner to demonstrate that he could not safely relocate within India. (Dkt. No. 13.) Petitioner contends that these errors mean Petitioner did not have a hearing "that is cognizable under any form of our jurisprudence as having been anything approaching the definition of a hearing, and thus, this Petition is distinguishable from [] Thuraissigiam." (Dkt. No. 13 at 2.) But an identical argument—that the respondent had a due process right to "judicial review of his allegedly flawed credible-fear proceeding"—was rejected by the Thuraissigiam Court. 140 S. Ct. at 1981. And Petitioner provides no additional support for his contention that Respondents' untimely production of the Credible Fear Interview Questions & Answers or the Immigration Judge's allegedly erroneous burden-shifting mean Petitioner did not have a hearing at all. The Court therefore concludes that it lacks jurisdiction to review Petitioner's claims.

Conclusion

In sum, the Court finds that it lacks jurisdiction to review Petitioner's claims under the recent holding in Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959 (2020). The Court therefore ADOPTS the Report and Recommendation of the Honorable Michelle L. Peterson, United States Magistrate Judge and ORDERS:

- (1) The Government's motion to dismiss (Dkt. No. 5) is GRANTED.
- (2) The stay of removal (Dkt. No. 3) is VACATED.
- (3) Petitioner's habeas petition DISMISSED without prejudice.

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1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated November 13, 2020.

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5 Marsha J. Pechman
6 United States Senior District Judge
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